

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Document #

48

Pinero

USCA NO. 07-4355cv

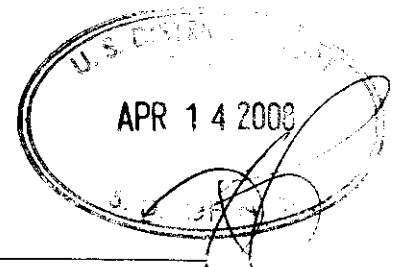
-v-

Greiner

SDNY NO. 01-cv-9991
JUDGE: Denise L. Cole
DATE: 4-17-08

INDEX TO THE RECORD ON APPEAL

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DISTRICT COURT DOCKET ENTRIES -----

DOCUMENTS

DOC#

Clerk's Certificate

See Attached List of Numbered Documents

Only Circled Documents Included

All others missing at this time

(☒) Original Record

(☐) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 14th Day of APRIL, 2008.

**United States District Court for
the Southern District of New York**

Pineru

-v-

Greiner

Date: 4/14/08

U.S.C.A. # 07-4355cv

U.S.D.C. # 01cv-9991

D.C. JUDGE: Denise L. Cote

Clerk's Certificate

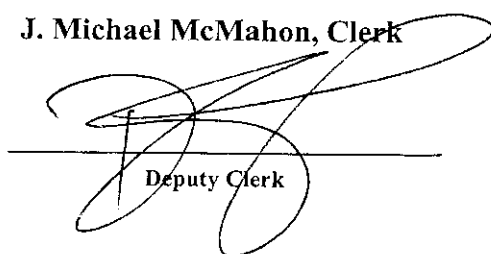
I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered ____ Through ____, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

<u>Date Filed</u>	<u>Document Description</u>
11/13/01	Habess Petition
12/13/01	Petitioner's Letter
12/13/01	Order of Stay
4/29/03	Notice of Motion
4/30/03	Order of Assignment
5/6/03	Petitioner's Order
5/9/03	Petitioner's Letter
5/15/03	Order of Service
5/16/03	Notice of Motion
6/27/03	Respondent's Letter
6/27/03	Order Lifting Stay

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 14th Day of APRIL In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 232nd year.

J. Michael McMahon, Clerk

By


Deputy Clerk

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DATE: 4/17/08U.S.C.A. # 07-4355U.S.D.C. # 01-cv-9991D.C. JUDGE: Denise L. CoteCLERK'S CERTIFICATE (Continued)DESCRIPTION OF DOCUMENTSDOC. #

<u>6/30/03</u>	<u>Order of Stay</u>
<u>1/7/04</u>	<u>Endorsed Memo</u>
<u>1/7/04</u>	<u>Endorsed Memo</u>
<u>8/31/04</u>	<u>Motion for Stay</u>
<u>8/31/04</u>	<u>Petitioner's supporting declaration</u>
<u>5/5/05</u>	<u>Order Lifting Stay</u>
<u>6/1/05</u>	<u>Motion to withdraw</u>
<u>6/2/05</u>	<u>Memorandum and Order</u>
<u>6/15/05</u>	<u>Memorandum and Order</u>
<u>7/8/05</u>	<u>Memorandum and Order</u>
<u>7/8/05</u>	<u>Memorandum and Order</u>
<u>8/4/05</u>	<u>Endorsed Letter</u>
<u>10/3/05</u>	<u>Endorsed Letter</u>
<u>10/3/05</u>	<u>Respondent's Affidavit</u>
<u>11/28/05</u>	<u>Petitioner's supporting declaration</u>

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DATE: 4/14/08

U.S.C.A. # 07-4335 pr

U.S.D.C. # 01-cv-9991

D.C. JUDGE: Denise L. Cote

CLERK'S CERTIFICATE (Continued)

DESCRIPTION OF DOCUMENTS

DOC. #

5/9/06 Motion for Extension of Time

5/11/06 Memorandum and Order

8/9/06 Petitioner's Counsel's Letter

8/31/06 Motion for Stay

9/12/06 Memorandum and Order

5/29/07 Report and Recommendations

10/3/07 Filing Error

APPEAL, CLOSED

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:01-cv-09991-DLC-DFE
Internal Use Only

Pinero v. Greiner
Assigned to: Judge Denise L. Cote
Referred to: Magistrate Judge Douglas F. Eaton
Demand: \$0
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 11/13/2001
Date Terminated: 09/18/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Date Filed	#	Docket Text
11/13/2001	1	PETITION for writ of habeas corpus pursuant to 28 USC 2254. (db) (Entered: 12/03/2001)
11/13/2001		Magistrate Judge Douglas F. Eaton is so designated. (db) (Entered: 12/03/2001)
12/13/2001	2	Letter filed by William Pinero addressed to Judge Cote from William Pinero, dated 11/20/01, re: petition for habeas relief. (db) (Entered: 12/17/2001)
12/13/2001	3	ORDER; petitioner's claims of ineffective assistance of appellate counsel are dismissed, and the remainder of his petition is stayed. The stay is conditioned on petitioner moving to lift the stay within 30 days of the conclusion of his state court proceedings, if those proceedings have not resolved the matter. This case shall be transferred to the suspense docket. (signed by Judge Denise L. Cote); Copies mailed. (sn) Modified on 01/14/2002 (Entered: 12/17/2001)
04/29/2003	5	NOTICE OF MOTION by William Pinero for an order, to lift stay. ; Return Date not indicated. (sac) (Entered: 05/01/2003)
04/30/2003	4	Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for habeas corpus. Referred to Magistrate Judge Douglas F. Eaton. (signed by Judge Denise L. Cote) (kw) (Entered: 05/01/2003)
05/06/2003	6	Letter filed by William Pinero addressed to Mag. Judge Eaton from William Pinero, dated 4/30/03, re: Petitioner writes to inform the Court that he is being represented by Attorney, Damon Carter. (ae) (Entered: 05/08/2003)
05/09/2003	7	Letter filed by William Pinero addressed to Judge Cote from William Pinero, dated 3/4/03, re: Copies of motion to lift stay. (sb) (Entered: 05/13/2003)
05/15/2003	8	Order that the clerk shall serve a copy of this order and petition upon the respondent and the District Attorney of the Bronx and shall send a copy of this order by certified mail to petitioner. Answer due on 8/15/03 for Charles Greiner (signed by Magistrate Judge Douglas F. Eaton) Copies mailed by Chambers. Copies sent certified mail, return receipt requested #7001251000063008 to petitioner and #70012510000630086034 on 5/15/03. Received by D.A. Office on 5/20/03 and petitioner on 5/23/03. (yv) Modified on 06/09/2003 (Entered: 05/19/2003)
05/16/2003	9	NOTICE OF MOTION by William Pinero for an order, staying proceedings in this action ; Return Date 5/30/03 at 9:30. (sac) (Entered: 05/20/2003)
06/27/2003	10	Letter filed by Charles Greiner addressed to Magistrate Judge Eaton from Kristin L. Vassallo, dated 5/28/03, re: no position with respect to petitioner's motion to stay proceedings. (yv) (Entered: 07/01/2003)
06/27/2003	12	ORDER, that Pinero has timely moved for a lifting of the stay. The stay is hereby lifted ; The Clerk of the Court is to serve copies of this Order, of the Motion to Lift Stay/Motion to Amend and of the petition by certified mail upon the respondent and the District Attorney of the Bronx ; This action is referred to Magistrate Judge Eaton. All correspondence and requests should be sent to the attention of Judge Eaton. (signed by Judge Denise L. Cote); Copies mailed by Chambers. Sent copy to Case Assignments Clerk. PETITIONER.#7001-2510-0006-3008-8052, returned on 07/09/03. D.A.BRONX..#7001-2510-0006-3008-8014, returned on 07/10/03. (The petition was sent by certified mail, as per order document #8) (tp) Modified on 07/15/2003 (Entered: 07/02/2003)
06/30/2003	11	ORDER; that pursuant to Zarvela v. Artuz, 254 F. 3d 374 (2d Cir. 2001), I stay the proceedings in our Court upon the conditions that are set forth in this Order. (signed by Magistrate Judge Douglas F. Eaton); (pl) (Entered: 07/02/2003)
01/07/2004		MEMO ENDORSED on 5 Motion for stay. Mooted re: 5 Motion for Miscellaneous Relief by request for stay on 5/16/03. (Signed by Judge Denise L. Cote on 1/6/04) (sac,) (Entered: 01/20/2004)
01/07/2004		MEMO ENDORSED granting 9 Motion to Stay on 6/30/03. (Signed by Judge Denise L. Cote on 1/6/04) (sac,) (Entered: 01/20/2004)
08/31/2004	13	MOTION to Stay re: 1 Petition for Writ of Habeas Corpus. Document filed by William Pinero. (jco,) (Entered: 09/01/2004)
08/31/2004	14	DECLARATION of Damond J. Carter in Support re: 13 MOTION to Stay re: 1 Petition for Writ of Habeas Corpus. Document filed by William Pinero. (jco,) (Entered: 09/01/2004)
05/05/2005	15	ORDER that the court lifts all stay orders in our court, and I deny Mr. Carter to proceed diligently and with no further delays; I direct Mr. Carter to write to me by 5/13/05 and tell me whether Judge Read's 9/13/04 decision was the final decision by the state courts on Mr. Carter's petition for coram nobis; I direct Mr. Carter to send me by 6/1/05 documentary proof of the date of filing of each post conviction application for collateral relief in state court, whether filed by William Pinero pro se or by Mr. Carter as Mr. Pinero's attorney; I direct Mr. Carter to serve ADA Vassallo with the motion to amend and a proposed amended petition by 6/1/05 and to file it with the clerk of our court; I will not grant any extension of this deadline; by 7/1/05 respondent must serve and file his opposition, if any, to the motion to amend the petition; if respondent does not oppose the amendment, he must write to me by 7/1/05 informing me of that fact; in that event, he must serve and file his opposition to the amended petition by 8/1/05; I direct Mr. Carter to send a copy of today's memorandum and order to Mr. Pinero promptly. (Signed by Judge Douglas F. Eaton on 5/4/05) Copies sent by chambers. (dle,) (Entered: 05/06/2005)
06/01/2005	17	MOTION for Damond J. Carter to Withdraw as Attorney. Document filed by William Pinero. (sac,) (Entered: 06/07/2005)
06/02/2005	16	MEMORANDUM AND ORDER; In my 5/4/05 Memorandum and Order, I sketched the performance of Damond J. Carter, Esq. since he filed a notice of appearance for petitioner in 5/2003. (Signed by Judge Douglas F. Eaton on 6/2/05) (sac,) (Entered: 06/06/2005)

06/15/2005	18	MEMORANDUM AND ORDER; I direct Mr. Carter to serve and file, as soon as possible and in any event by 6/17/05, a more complete answer to my Directive #2 (after quoting it), and a more complete answer to my Directive #4 (after quoting it). I remind both Mr. Carter and William Pinero that any letter to the Court should start out by listing the docket number. (Signed by Judge Douglas F. Eaton on 6/14/05) (sac,) (Entered: 06/17/2005)
07/08/2005	19	MEMORANDUM AND ORDER re: DENYING 17 MOTION for Damond J. Carter to Withdraw as Attorney Except to the following extent as set forth in this memorandum and order. (Signed by Judge Douglas F. Eaton on 7/7/05) (djc,) (Entered: 07/08/2005)
07/08/2005	20	MEMORANDUM AND ORDER Pinero's letter dated 6/3/05 asks me to give Mr. Carter more time to exhaust and to amend; in the alternative, it asks me to appoint a new attorney for him. I deny both requests. "[C]ounsel should not be appointed in a case where the merits of the indigent's claim are thin and his chances of prevailing are therefore poor." <i>Carmona v. U.S. Bureau of Prisons</i> , 243 F.3d 629,632 (2d Cir. 2001). Based on the record so far, I think the merits of Pinero's claims are thin. I hereby rule on Mr. Carter's motion to withdraw as attorney (Docket Item #17). I deny the motion except to the following extent, as further set forth in this Order. (Signed by Judge Douglas F. Eaton on 7/7/05) "Copies Mailed By Chambers"(jco,) (Entered: 07/11/2005)
08/04/2005	21	ENDORSED LETTER addressed to Judge Eaton from Mary Jo Blanchard dated 8/2/05: since ADA Vassallo has left the DA's office, I reluctantly grant this extension (to 10/17/05 to file an answer). But respondent must file the answer by 10/17/05 even if ADA Blanchard has not recvd the transcript. I direct Mr. Carter to serve and file reply apers on behalf of Pinero by 11/11/05 (with courtesy copies to me and to Pinero and to Pinero's stepfather. (Signed by Judge Douglas F. Eaton on 8/3/05) (cd,) (Entered: 08/09/2005)
10/03/2005	22	ENDORSED LETTER addressed to Magistrate Judge Douglas F. Eaton from Mary Jo L. Blanchard dated 9/30/05 re: counsel for dft requests a two week extension from 10/17/05 to 10/31/05 to file answer. I grant this request. I direct Mr. Carter to serve and file reply papers on behalf of Pinero by 11/28/05, with courtesy copies to me and to Pinero and to Pinero's stepfather. (Signed by Judge Douglas F. Eaton on 9/30/05) (dle,) (Entered: 10/04/2005)
10/03/2005		Set Answer Due Date purs. to 22 Endorsed Letter, as to Charles Greiner answer due on 10/31/2005. (dle,) (Entered: 10/04/2005)
10/31/2005	23	AFFIDAVIT of Mary Jo L. Blanchard in Opposition re: 1 Petition for Writ of Habeas Corpus. Document filed by Charles Greiner. (djc,) (Entered: 11/01/2005)
11/28/2005	24	DECLARATION of Damond J. Carter in Support re: 1 Petition for Writ of Habeas Corpus. Document filed by William Pinero. Received in the night deposit box on 11/28/05 at 7:33 p.m.. (sac,) (Entered: 11/29/2005)
03/08/2006	25	MOTION to Stay <i>Petitioner's Habeas Proceedings</i> . Document filed by William Pinero. (Attachments: # 1 Affidavit Record Counsel's Declaration In Support Of Petitioner's Stay Application)(Carter, Damond) (Entered: 03/08/2006)
05/09/2006	26	MOTION for Extension of Time ; <i>Petitioner's letter to the District Court informing the Court that Petitioner's CPL 440.10 Motion to Vacate was denied by the Supreme Court of New York, Bronx County on April 5, 2006, and that Petitioner filed his application for Leave to Appeal to the Appellate Division, New York's First Judicial Department on April 26, 2006 (Notice of Motion Attached)</i> . Document filed by William Pinero. (Attachments: # 1 Supplement Petitioner's Notice of Motion for Leave to Appeal filed in the Supreme Court of New York, Appellate Division First Judicial Department)(Carter, Damond) (Entered: 05/09/2006)
05/09/2006	27	MOTION for Extension of Time ; <i>corrected supporting letter correcting the spelling of Judge Eaton's name, which was misspelled in the initial supporting letter</i> . Document filed by William Pinero. (Carter, Damond) (Entered: 05/09/2006)
05/11/2006	28	MEMORANDUM AND ORDER: The Court hereby Stays the habeas proceedings in our Court until the Appellate Division issues a decision on petitioner's CPL 440.10 motion. Mr. Carter must, within 10 days, send Chambers a copy of that decision, and, if the decision is unfavorable to petitioner, then Mr. Carter must also send a copy of all the papers that the parties submitted to the state courts on that motion. His cover letter must state whether (a) he rests on the state court papers, or (b) he will submit additional papers. If Mr. Carter chooses to submit additional papers, then he must do so within 30 days from the date of his letter to me. Within 30 days from the date of her receipt of Mr. Carter's papers, ADA Blanchard must submit her opposition. This Memorandum and Order disposes of three motions -- Docket Items 25,26 and 27. (Signed by Magistrate Judge Douglas F. Eaton on 5/10/2006) (lb,) (Entered: 05/12/2006)
08/09/2006	29	LETTER addressed to Judge Eaton from Donald J. Carter, Esq. dated 8/1/06 re: submission of the Appellate Division's decision denying Mr. Pinero's leave application.. (djc,) (Entered: 08/10/2006)
08/31/2006	30	MOTION for an order to further stay proceedings in this matter. Document filed by William Pinero. (dle,) (Entered: 09/01/2006)
09/12/2006	31	MEMORANDUM AND ORDER; the Court denies Mr. Carter's request for a further stay. If Mr. Carter is going to submit any further papers to the Court, he is directed to do so no later than 10/2/2006. (Signed by Judge Douglas F. Eaton on 9/11/06) (kco,) (Entered: 09/13/2006)
10/03/2006	34	LETTER addressed to Magistrate Judge Douglas F. Eaton from Damond J. Carter, Esq. dated 9/27/06 re: Supplemental Letter Brief in support of Petitioner's habeas petition, in lieu of a more formal brief. Document filed by William Pinero.(ae) (Entered: 06/04/2007)
05/29/2007	32	REPORT AND RECOMMENDATIONS: for reasons further set forth in said Order, I recommend that Judge Denise L. Cote DENY Pinero's 1 Habeas Petition. Objections to R&R due by 6/15/2007 (Signed by Judge Douglas F. Eaton on 5/25/07) Copies Mailed by Chambers. (db) (Entered: 05/30/2007)
05/29/2007	33	REPORT AND RECOMMENDATIONS I recommend that Judge Cote deny Pinero's habeas petition. Objections to R&R due by 6/15/2007 (Signed by Judge Douglas F. Eaton on 5/25/07) (jco) (Entered: 05/31/2007)
05/30/2007	41	ENDORSED LETTER addressed to Judge Douglas F. Eaton from Damond J. Carter dated 3/13/07 re: a request that Petitioner's either be granted an evidentiary hearing or oral arguments on this matter. ENDORSEMENT: I deny Petitioner's requests for an evidentiary hearing or oral argument. See today's Report and Recommendation to Judge Cote. (Signed by Judge Douglas F. Eaton on 5/25/07) (kco) (Entered: 06/06/2007)
06/01/2007	40	MOTION for an Order, for Extension of Time in which Petitioner may file objections to the Magistrates Court's Report and Recommendation dated May 25, 2007 and MOTION for an order, for permission to use ECF for purposes of filing the objections. Document filed by William Pinero.(tro) (Entered: 06/06/2007)
06/04/2007	35	STATE COURT TRANSCRIPT of proceedings in the Supreme Court, County of Bronx, Case Number 0810-96, held on 5/28/1997 before Judge David Stadtmauer. (Vol. 1 of 5) (jar) (Entered: 06/04/2007)
06/04/2007	36	STATE COURT TRANSCRIPT of proceedings in the Supreme, County of Bronx, Case Number 0810-96, held on 7/11/1997 before Judge David Stadtmauer. [Vol. 2 of 5](jar) Modified on 6/4/2007 (Rivera, Jazmin). (Entered: 06/04/2007)
06/04/2007	37	STATE COURT TRANSCRIPT of proceedings in the Supreme, County of Bronx, Case Number 0810-96, held on 7/21/1997 before Judge David Stadtmauer. [Vol. 3 of 5] (jar) (Entered: 06/04/2007)

06/04/2007	38	STATE COURT TRANSCRIPT of proceedings in the Supreme, County of Bronx, Case Number 0810-96, held on 7/28/1997 before Judge David Stadtmauer. [Vol. 4 of 5] (jar) (Entered: 06/04/2007)
06/04/2007	39	STATE COURT TRANSCRIPT of proceedings in the Supreme, County of Bronx, Case Number 0810-96, held on 8/1/1997. (jar) (Entered: 06/04/2007)
06/07/2007	42	ORDER that the petitioner shall submit his objections to the Report no later than July 16, 2007. IT IS FURTHER ORDERED that the respondent shall submit any response within forty-seven days of being served with petitioner's objections. IT IS FURTHER ORDERED that this case shall not proceed via electronic case filing. Objections to R&R due by 7/16/2007. SO ORDERED. (Signed by Judge Denise L. Cote on 6/6/2007) (jmi) Modified on 6/11/2007 (Whilby, Karl). (Entered: 06/08/2007)
06/29/2007	43	ORDER: The petitioner shall submit his Objections to R&R by 7/30/2007. The respondent shall submit any response within forty-seven days of being served with petitioner's objections. (Signed by Judge Denise L. Cote on 6/27/2007) Copies mailed by chambers.(jar) (Entered: 07/03/2007)
09/17/2007	44	OPINION AND ORDER: Having reviewed the Report with care, there is no facial error in its conclusions. For the reasons given in this Opinion, Pinero's objections to the Report are denied following de novo review of his claims. Pinero's petition is denied. No certificate of appealability shall issue. Pinero has not made a substantial showing of a denial of a federal right, and appellate review is therefore not warranted. Moreover, any appeal from this order would not be taken in good faith. The Clerk of Court shall dismiss the petition. (Signed by Judge Denise L. Cote on 9/17/07) Copies Mailed By Chambers.(tro) (Entered: 09/18/2007)
09/17/2007		Transmission to Judgments and Orders Clerk. Transmitted re: 44 Memorandum & Opinion, to the Judgments and Orders Clerk. (tro) (Entered: 09/18/2007)
09/18/2007	45	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion and Order dated September 17, 2007, the petition for a writ of habeas corpus is denied and dismissed. (Signed by J. Michael McMahon, clerk on 9/18/07) (ml) (Entered: 09/18/2007)
10/03/2007	46	FILING ERROR - ELECTRONIC FILING IN NON-ECF CASE - MOTION for Leave to Appeal in forma pauperis (Petitioner's Notice of Appeal And Declaration In Support Of Petitioner's Motion To Proceed As A Poor Person). Document filed by William Pinero.(Carter, Damond) Modified on 10/4/2007 (KA). (Entered: 10/03/2007)
10/04/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF CASE ERROR. Note to Attorney Damond Jamal Carter to MANUALLY RE-FILE Document Notice of Appeal, Document No. 46. This case is not ECF. (KA) (Entered: 10/04/2007)
10/04/2007	47	NOTICE OF APPEAL from 45 Clerk's Judgment, 44 Memorandum & Opinion. Document filed by William Pinero. Copies of Notice of Appeal mailed to attorney(s) of record: Office of the Bronx County District Attorney. (nd) (Entered: 10/04/2007)
10/04/2007		Transmission of Notice of Appeal to the District Judge re: 47 Notice of Appeal. (nd) (Entered: 10/04/2007)
10/04/2007		Appeal Remark as to 47 Notice of Appeal filed by William Pinero. \$455.00 APPEAL FILING FEE DUE.(nd) (Entered: 10/04/2007)
10/04/2007		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 47 Notice of Appeal. (nd) (Entered: 10/04/2007)